

November 19, 2010

Detailed EPA comments on the Nov 12 version of the MD Phase I WIP

Provided by Jim Edward to Bob Summers.

1. We have evaluated the November 12 input deck of practices proposed for implementation now through 2017 (MDWIP10) that your staff submitted for evaluation. That set of implementation practices would achieve 75% of the 2017 statewide nitrogen target and 70% of the statewide phosphorus target. Compared to the previous WIP input deck (MDWIP9), decreases in agricultural and urban loads generally offset increases in wastewater and septic.

2. My staff are evaluating Maryland's November 9 request to assess whether final allocations that meet statewide allocations but exceed nutrient and/or sediment allocations in individual basins will achieve water quality standards in all tidal segments of the Bay. We expect to provide these results to you by the beginning of next week.

3. With respect to implementation strategies described in the narrative text of the Maryland WIP, there still remain reasonable assurance gaps that are large enough to trigger backstop allocations. If the following reasonable assurance gaps are not closed in the final MD Phase I WIP, we will consider backstop allocations for CAFOs and urban stormwater that would expand the animal feeding operations and urban areas which are subject to NPDES permit conditions.

4. Stormwater: Given the heavy reliance on stormwater retrofits, the funding question is significant and we are not yet assured that MD has identified a solution to the problem. The WIP refers to a combination of federal, state, and local funding, MS4 permit requirements to establish local funding capacity, and volunteer implementation. But while recognizing a significant funding gap, the commitment to "continue to pursue a system of fees for stormwater" does not include a commitment to a schedule for completion of that effort. The final WIP should clarify a commitment to a timeline for this important element. Also, the option to pursue stormwater retrofit funding with the state legislature is alluded to as a "backup", but there is no clear commitment to do so as either a primary strategy or as a contingency to be implemented on a particular timeline if dialogue with stakeholders should fail to assure sufficient stormwater retrofit funding. This too should be clarified in the final WIP.

5. Stormwater: The WIP relies heavily on stormwater retrofits in Phase I MS4 areas, but lacks a commitment to a clear performance objective for retrofits. This deficiency is mitigated to some degree by the combination of a target 1-inch Water Quality Protection Volume performance target for structural BMPs (page 18 of Chapter 5), an accounting system that will estimate actual retrofit load reductions as the product of treated area and treatment efficiency, and a commitment that retrofit performance standards "will be adjusted as needed toward meeting Chesapeake Bay TMDLs." We appreciate the narrative provided on page 18 of the Chapter 5 supplemental language that you provided on November 12, but it seems to only address a one-inch treatment target for structural BMPs, and even that is not clearly a requirement. We understand that achievable retrofit

performance is highly variable site to site, but we would like to see further explanation and clarification of treatment targets for sites that are subject to retrofit combinations of structural and non-structural BMPs.

6. Section 5.2.2 seems to be calling regulated Phase I MS4 discharges “nonpoint source”. This error should be corrected.

7. The text seems to imply that MD will include retrofit requirements in reissued Phase II permits, but this is not clear. The actual intent should be clarified in the WIP.

8. Agriculture: We are very concerned that we have not yet received a revised Ag WIP chapter. MDE staff have indicated that we should expect to see a revised Ag chapter on November 23, but we still have the impression that you are viewing the Phase II WIP as your opportunity to decide how to structure gap-closing programs and pay for them rather than providing such explanations now in the Phase I WIP.

9. Agriculture: We are also still concerned that the latest contingency chapter MD submitted on November 12 includes no hard-hitting contingencies for the agricultural sector. I strongly encourage you to choose and clarify gap-closing strategies in the Phase I WIP, provide detail on how funding and technical assistance gaps will be closed, and provide strong contingencies that will be implemented if implementation progress lags behind milestones.

10. Agriculture: Regarding addressing P imbalances in MD, I thought it may be helpful to give you some additional guidance on what we are looking for in your WIP. I've outlined what we'd like to see ideally and what would be acceptable for Phase I of the WIP.

What we need in your Phase I WIP is a commitment to comprehensively address P imbalances in MD over time. You have elements of a plan for addressing P issues such as refining the P index and promoting practices that reduce the nutrient loss from manure storage and application (cover crops, manure injection, ammonia emissions reductions, etc.).

Ideally, we'd like to see something like this:

Ultimate Goal: Apply manure P at the agronomic optimum rates for maximum crop yield. At the Chesapeake 2025 Goal Line conference we had general consensus that this was our ultimate goal and that it would certainly take time to get there. Interim goals could be to cap manure P application at P saturation rates of XX% or higher by certain date, with the aim to prohibit application of manure on soils with P saturation of 20% or higher.

Strategy: Strategy could include activities such as:

- \* develop a plan for targeted education/outreach to producers to explain the need to phase out manure application on high-P soils (VADCR is implementing this approach by educating producers that applying manure P on soils that are already 30% saturated is not

a long term solution). You could start with highest P soils that have greatest potential for P transport.

- \* securing USDA funding for helping with this transition. For poultry this could be a concerted outreach effort by NRCS, Conservation Districts, and Poultry integrators to encourage producers to sign up for the NRCS EQIP Alternative Manure Use program. For dairy, this could be getting a commitment from USDA to fund dairy manure storage facilities were needed to help with transition.

- \* supporting technologies to develop alternative uses for surplus manure, etc. EPA and USDA efforts to build a federal funding source for Innovative Technology development could help finance this effort over time with state match.

- \* provide P soil test data to best determine where to target efforts and to measure progress in (1) drawing down P in high-P soils and (2) ensuring that additional soils don't become saturated with P.

I understand that this isn't something that can happen over night and I understand that what you put in Phase I WIP may not be as detailed as what I have outlined above. What we are looking for is an acknowledgement that this is an environmental concern and a commitment to develop a plan that would be phased in over time to address this problem. Rather than having all the goals and strategies outlined, you could identify key components that you may consider and determine a date by when you'd have a plan fleshed out.